

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID C. BURGESS and U.S. POSTAL SERVICE,
POST OFFICE, Roanoke, Va.

*Docket No. 96-1332; Submitted on the Record;
Issued March 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on January 19, 1996.

The Board has duly reviewed the case record and concludes that the Office did not abuse its discretion in this case.

In the present claim, appellant has alleged that he sustained an emotional condition in the performance of his employment as a letter carrier. The Office denied appellant's claim by decision dated September 26, 1994 on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty. In an accompanying memorandum to the Director, the claims examiner stated that appellant had not established that any of his alleged employment incidents occurred in the performance of duty. The claims examiner explained that while appellant had a prior injury with an unresolved leave buy-back request with the Office which appellant believed caused the denial of his request for a transfer, the Office's actions in processing a compensation claim were not within the performance of duty. Further, while appellant had alleged unfair treatment by management regarding his request for transfer, age discrimination and improper route inspections, appellant had not established error or abuse by management in any such action. Finally, the claims examiner stated that while appellant had alleged that his supervisor and two co-workers insulted him, perceptions of harassment were not compensable under the Federal Employees' Compensation Act, absent corroborating evidence that such harassment did in fact occur. On September 11, 1995 appellant requested that the Office reconsider his claim. The Office denied appellant's application for review, without merit review, on January 19, 1996.

The Board's jurisdiction is limited to review of decisions issued no longer than one year prior to the date of an appeal. The Board therefore lacks jurisdiction to review the decision of the Office dated September 26, 1994 which denied appellant's claim. The Board's jurisdiction extends only to review of the January 19, 1996 decision, which denied appellant's application for

review.¹ Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.²

In support of his request for reconsideration, appellant submitted a number of documents. Appellant submitted several additional reports from his treating psychiatrist, Dr. J. Joe Yazel, a psychiatrist with the Department of Veterans Affairs. Appellant also submitted documents which indicated that while he was removed from employment on April 28, 1995 for unacceptable attendance, the removal action was rescinded on June 14, 1995; as well as a March 6, 1992 decision from the Equal Employment Opportunity Commission which indicated that his age discrimination case was dismissed for failure to prosecute. The documents appellant submitted in support of his request for reconsideration were not previously of record and thus did constitute new evidence. The documents did not, however, address the relevant issue of whether the employing establishment erred or acted abusively in its administrative action or harassed appellant. The Board has held that the mere fact that the employing establishment lessens or reduces a disciplinary action or sanction does not establish abuse.³ The documents submitted by appellant do not contain corroborating evidence to support any specific act of error, abuse or harassment by management regarding appellant. The Office therefore properly denied appellant's application for review on January 19, 1996.

¹ 20 C.F.R. § 501.3(d)(2).

² *Norman W. Hanson*, 45 ECAB 430 (1994).

³ *Barbara J. Nicholson*, 45 ECB 803 (1994).

The decision of the Office of Workers' Compensation Programs dated January 19, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member